

PROB 12B
(7/93)

ORIGINAL

United States District Court

for the

DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUN 29 2007

at 11 o'clock and 0 min. PM
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: FRED M. KIYABU, III

Case Number: CR 02-00426HG-01

Name of Sentencing Judicial Officer: The Honorable Helen Gillmor
Chief U.S. District Judge

Date of Original Sentence: 7/25/2003

Original Offense: Counts 1 and 2: DISTRIBUTION OF 5 GRAMS OR MORE
OF METHAMPHETAMINE, in violation of 21 U.S.C. § 841(a)(1),
a Class B felony

Count 3: DISTRIBUTION OF 50 GRAMS OR MORE OF
METHAMPHETAMINE, in violation of 21 U.S.C. § 841(a)(1),
a Class A felony

Original Sentence: Seventy (70) months imprisonment as to each of Counts 1, 2, and 3, with all terms to be served concurrently; followed by five (5) years of supervised release as to Counts 1, 2, and 3, with all terms to be served concurrently and with the following special conditions: 1) That the defendant participate in a substance abuse program, which may include drug testing at the discretion and direction of the Probation Office; 2) That the defendant is prohibited from possessing any illegal or dangerous weapons; 3) That the defendant provide the Probation Office access to any requested financial information; and 4) That the defendant shall submit his person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition.

Type of Supervision: Supervised Release Date Supervision Commenced: 12/15/2006

PETITIONING THE COURT

[X] To modify the conditions of supervision as follows:

Mandatory Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than 8 valid drug tests per month during the term of supervision.

CAUSE

On 12/15/2006, the subject began his term of supervision under the U.S. Probation Office, District of Hawaii. During his processing, the subject was referred for substance abuse treatment and random drug testing at Freedom Recovery Services, Inc. (FRS), Honolulu, Hawaii.

On 6/6/2007, the subject was authorized to travel to the island of Maui for work purposes. To address his drug testing condition, the subject agreed to submit to random drug testing at the discretion of the Probation Office.

Pursuant to U.S. vs. Stephens, the Violent Crimes Control Act (VCCA) testing condition imposed at sentencing limits the Probation Office to three non-treatment related drug tests. In order to ensure that the subject does not reinvolve himself in substance abuse, the recommended modification of his VCCA condition will enable the Probation Office to address the subject's travel request and monitor him throughout his term of supervision. The subject has consented to the modification of his VCCA condition.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject also agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed modification and have no objections to the modification.

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Respectfully submitted by,



CARTER A. LEE
U.S. Probation Officer

Approved by:

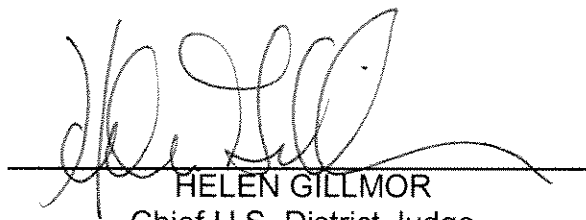


PETER D. YOSHIHARA
Supervising U.S. Probation Officer

Date: 6/18/2007

THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above
☐ Other


HELEN GILLMOR
Chief U.S. District Judge

6.28.07

Date

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/ Supervised Release and/or Extend Term of Supervision


I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

- ☐ To extend the term of supervision for _____ years, for a total term of _____ years.
☒ To modify the conditions of supervision as follows:

General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than 8 valid drug tests per month during the term of supervision (mandatory condition).

Witness:


PETER D. YOSHIHARA
Supervising U.S. Probation Officer

Signed:


FRED M. KIYABU III
Supervised Releasee

JUNE 08, 07
Date